IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.359 OF 2007

Citifinancial Consumer Finance
India Ltd. .. Petitioner

Versus

Ramesh Bhikaji Shinde & Anr. .. Respondents

Mr.Mohit Gadkari for petitioner

CORAM : S.C.DHARMADHIKARI, J.

DATE : 26th October 2007.

P.C.

. This is petition under section 9 of the Arbitration and Conciliation Act, 1996. The arbitration petition together with its annexures

was served on the respondents by registered post. However, the postal acknowledgement states that when the packet was delivered the same was refused by the parties. There is presumption that when the postal authorities deliver the packet in their ordinary course of duty, it is considered as good service. Hence, the petition proceeds.

2. Perused the petition and the annexures thereto. Considering that home loan agreement was entered into between the petitioners and the respondents at Mumbai on 27th July 2005 under which amounts have been advanced and disbursed, so also there being clear obligation to repay the same in instalments stipulated therein, prima facie case is made out. Balance of convenience is also in favour of petitioners, inasmuch as, from a perusal of paras 6 and 7 of the petition, it is apparent that if the injunction is not issued, then, it would be difficult for the

petitioners to recover the sum which is due and payable. The flat in question has been mortgaged, as evidenced by para 3 and Exh.B to the petition.

3. In such circumstances and when the amounts have not been paid, despite admitting the liability, it is just and convenient that the Court Receiver is appointed Receiver of the property more particularly described in prayer clause (a) of the petition. However, the Court Receiver shall not dispossess the party in possession and should give an opportunity to respondents to act as His Agent, on such terms and conditions as he deems fit and proper. Till the receiver takes possession, there will be an injunction in terms of prayer clause (c) except the word "dealing with". After deleting the said word, the said prayer would read thus:-

"(c). That the respondents their

servants, agents and representatives or anybody claiming through or under them be restrained by an order of injunction of this Hon’ble Court from or in any manner disposing off, selling, transferring, alienating, entering into any agreement or arrangement, encumbering or creating any third party right, title or interest, parting with or putting any other person in possession and enjoyment and/or parting with the same to any third party in any manner whatsoever in respect of the said property i.e. Flat No.15, 3rd Floor, Sudaram Malbar Hill Road, Mulund Colony, Mumbai 400 082. more particularly described in the Schedule being Exh."B" to the petition."

(S.C.DHARMADHIKARI, J)